

FROM

FAX NO. : 12125717174

JUL 10 2008 03:45PM P2

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/17/08

Law Offices of
Mitchel E. Weiss

150 Broadway
Suite 1307

New York, New York 10038

Phone (212) 571-7171

Fax: (212) 571-7174

Mitchel E. Weiss

Member of NY, NJ and Ct Bars

Of Counsel

Randi B. Siegel

Member of NY and DE Bars

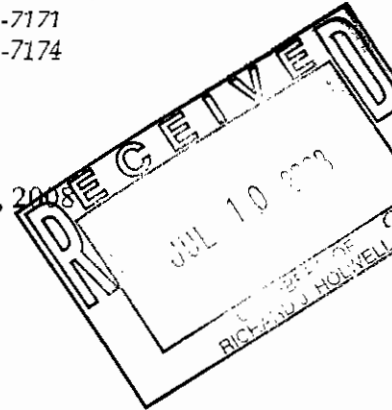
Paralegal

Patricia M. Motkin

Via Facsimile: (212) 805-7948

Honorable Richard J. Holwell
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

July 10, 2008



New Jersey Office

11-18 Saddle River Road

Fair Lawn, New Jersey 07410

(201) 659-4144

Long Island Office

390 Old Country Road

Garden City, New York 11530

(516) 747-7472

RE: Docket #: 2008-CIV-5387 (RJH)
Gina Marie Rosado v. Miles Daniel Johnson,
Baker Installations, Inc. and a Third-Party Action
Date of Accident: November 19, 2007
My File #: PN-1424

Honorable Sir:

Please be advised that the undersigned represents Plaintiff Gina Rosado for serious personal injuries she sustained in a motor vehicle accident which occurred on November 19, 2007 due to the negligence and recklessness of others.

For your information, the plaintiff was a passenger in a vehicle being driven by her husband, Edward Rosado at the intersection of Prospect Avenue and Jennings Street, Bronx, New York. Initially, an action was commenced in Supreme Court of the State of New York, Bronx County naming the plaintiff's husband, Edward Rosado as a defendant as well as defendants Miles Daniel Johnson and Baker Installations, Inc. Defendants Johnson and Baker Installations are out of state residents/entities.

The action as against defendant Edward Rosado in Supreme/Bronx was recently discontinued without prejudice as the automobile insurance carrier for defendant Rosado, Nationwide, advised me that there was no spousal liability insurance purchased on the subject insurance policy and therefore they would not defend nor indemnify Mr. Rosado.

Subsequently, counsel for defendants Johnson and Baker Installations filed a Notice of Removal of Action to the Southern District on June 13, 2008 on the basis of diversity jurisdiction. Thereafter, counsel for said defendants also brought a third-party action against Edward Rosado in the Southern District.

Honorable Richard J. Holwell

USDC/SDNY

Docket #: 2008-CIV-5387 (RJH)

=====

Although the original action in Supreme/Bronx as against defendant Rosado was discontinued, upon further reflection and in the best interest of the plaintiff, Gina Rosado, that action should not have been discontinued. Therefore, a new action by the plaintiff as against defendant Edward Rosado stemming from the subject motor vehicle accident was prepared and is in the process of being filed with the Clerk of Supreme Court, Bronx County. A copy of said summons and complaint is annexed hereto for your information.

This letter is respectfully submitted to you in lieu of bringing a formal Motion to Remand to State Court at this time pursuant to 28 U.S.C.A. §1447.

If this case is remanded, it is my intention to bring a motion in State Court to consolidate the subject action with the new action commenced against defendant Rosado as the subject matter of both actions stem from the same motor vehicle accident. In the interest of judicial economy and fairness, these cases should be consolidated and litigated together in one action. That being said, diversity jurisdiction would be defeated as defendant Edward Rosado is a New York resident as is the plaintiff, Gina Rosado.

Based on the foregoing, I respectfully request that Your Honor issue an Order remanding the subject action back to Supreme Court, Bronx County without requiring the plaintiff to bring a formal motion to remand.

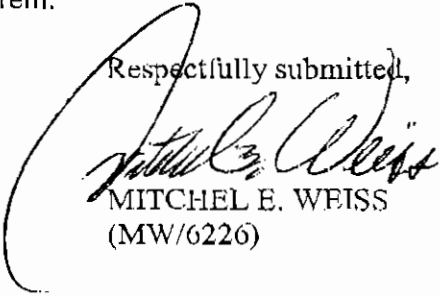
Thank you for your consideration herein.


MEW:pm

Enclosure

cc: Via Facsimile: (914) 345-0811
Jason M. Bernheimer, Esq.
Nesci-Keane, PLLC
40 Saw Mill River Road, Suite UL1
Hawthorne, New York 10532
(914) 345-0005

Respectfully submitted,


MITCHEL E. WEISS
(MW/6226)

In light of defendants' objection to remand, plaintiff is directed to proceed by formal motion to be made on or before August 15, 2008. Opponent's papers due September 5, 2008. Reply papers due September 12, 2008.
SO ORDERED  USDC